

C89-35

JPA No 89-10

INTERGOVERNMENTAL AGREEMENT

BETWEEN

THE STATE OF ARIZONA

AND

THE CITY OF TEMPE

Agreement No. 42-1-506-051

Project No. RAM-600-1-506

Tracs No. 101 L MA H2499 01C

Outer Loop Highway

First Street to Southern Avenue

Water Line Relocations,

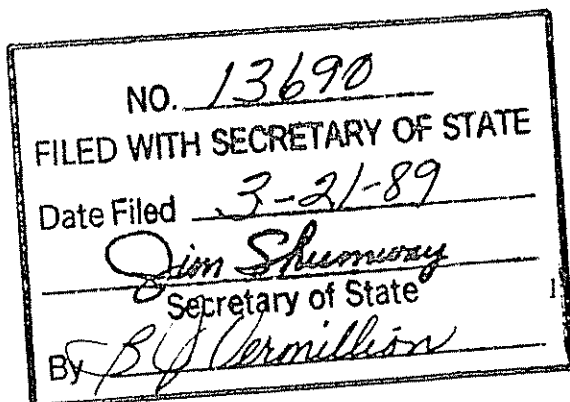
and Futures

This AGREEMENT entered into this 20<sup>th</sup> day of Mar., 1989, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, hereinafter called "STATE", and the CITY OF TEMPE, acting by and through its CITY COUNCIL, hereinafter called "CITY".

RECITALS

In connection with the construction of Project No. RAM-600-1-506, Outer Loop Highway, First Street to Southern Avenue, it will be necessary to relocate certain water lines belonging to CITY and CITY has requested future water line on Balboa Avenue alignment to be incorporated within said construction project. The work to be performed under this Agreement is shown on the plans marked Exhibit "B".

FILED WITH SECRETARY OF STATE



No. \_\_\_\_\_

Date Filed \_\_\_\_\_

\_\_\_\_\_  
Secretary of State

A.G. Contract No. KR89-0032-TRD

WHEREAS, STATE is empowered by Section 28-108 Arizona Revised Statutes to enter into this Agreement, and the Director of the Arizona Department of Transportation has delegated to the undersigned the authority to execute same on behalf of STATE; and

WHEREAS, CITY is empowered by Section 9-672B Arizona Revised Statutes to enter into Agreement and acting by and through its City Council, has authorized the undersigned to execute same on behalf of City; and

WHEREAS, the CITY has requested the STATE design and construct the future water line on the Balboa Avenue alignment, the CITY shall reimburse the STATE for the actual cost.

WHEREAS, certain CITY facilities listed in Exhibit "A" have prior rights, by virtue of letter of understanding between STATE and CITY and certain utilities were constructed within private property or undedicated streets as evidenced by Exhibit "C", those CITY facilities will be relocated or adjusted by STATE at no cost to CITY.

#### AGREEMENT

THEREFORE, it is mutually agreed by and between the parties hereto as follows:

1. STATE shall by contract RAM-600-1-506, provide the necessary labor, materials and equipment to complete CITY relocations, and future as shown in Exhibit "B".

2. CITY shall be responsible for approving the design, inspecting and accepting the installation of said facilities, and shall assume all system liability and costs associated therewith.

3. Maintenance of CITY's facilities covered by the Agreement shall be provided for by CITY and CITY shall have the right to make emergency repairs to said facilities upon notice to STATE and at the expense of CITY.

4. The CITY shall be responsible for all design costs associated with the design of the future water line, as shown in Exhibit "A", plus on additional five (5) percent for STATE's engineering and administrative costs.

5. CITY shall be responsible for all construction costs associated with the water line installation for future as shown in the cost estimate marked Exhibit "A" plus an additional fifteen (15) percent for STATE's construction, engineering and administrative costs.

6. In the event it is determined that a change in the scope of work is required, both parties shall agree, in writing, to the change, including the funding responsibilities of each party.

7. CITY agrees to reimburse STATE for actual cost of all labor, materials and equipment required to complete the work covered in paragraphs 4, 5, and 6 above and advance the STATE the estimated amount as shown in Exhibit "A", prior to advertisement for bids.

8. Upon completion of construction, the STATE will submit a breakdown of the actual construction cost to the CITY and invoice the CITY for any balance due or STATE shall reimburse the CITY for any over payment above estimated cost.

9. CITY shall save and hold harmless STATE, or any of its departments, agencies, officers or employees from all costs and damages incurred and from any other damages to any person, legal entities (i.e., corporation, partnership, trust, etc.) or property arising out of or in connection with any negligent act or omission of CITY, its agents or independent contractors in the course of the performance of the provisions of this Agreement, and not caused by any act or omission of STATE or any of its departments, agencies, officers or employees, agents or independent contractors. The above costs or damages incurred by STATE or any of its departments, agencies, officers or employees shall include in the event of an action, court costs, expenses of litigation and a reasonable attorney's fee, provided the STATE shall have given notice to CITY, of any claim asserted and shall permit CITY to participate in defense and settlement thereof.

10. As to any liability claims where it is alleged that the parties hereto may be joint tortfeasors, the parties agree that they will contribute to any settlement or judgment in the amount that is proportionate to the relative degree of fault of the respective parties, as agreed to between them or as adjudicated by a court of competent jurisdiction. Nothing herein shall restrict or impair any right of indemnity granted to either party by any other provision of this Agreement.

11. This Agreement is subject to the budgetary limitations set forth in Arizona Revised Statutes 28-1823 through 28-1826 inclusive and is further subject to the provisions of Chapter 1 of the Title 35, Arizona Revised Statutes.

12. CITY hereby agrees to comply with Executive Order 75-5 issued April 28, 1975, the provisions of which are herein incorporated by reference and made a part of this Agreement.

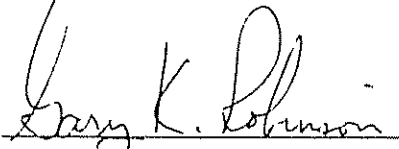
13. The parties agree to use arbitration, after exhausting applicable administrative reviews, to resolve disputes arising out of this Agreement where the sole relief sought is monetary damages of \$100,000, or less, exclusive of interest and costs.

14. All parties are hereby put on notice that this Agreement is subject to cancellation by the Governor pursuant to Arizona Revised Statutes Section 38-511, the provisions of which are incorporated herein by reference only.

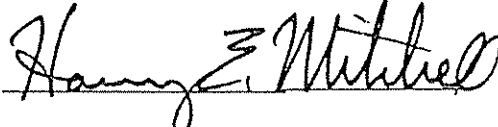
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first herein above written.

ARIZONA DEPARTMENT  
OF TRANSPORTATION

CHARLES L. MILLER  
Director

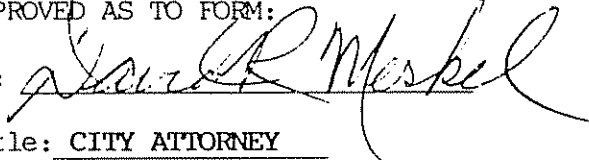
  
GARY K. ROBINSON  
Chief Deputy State Engineer

CITY OF TEMPE

By: 

Title: MAYOR


APPROVED AS TO FORM:

By:   
Title: CITY ATTORNEY

ATTEST AND COUNTERSIGN

By:   
Title: CITY CLERK

Recommended by:

  
Rolly Simeon, P.E.  
Outer Loop Engineer  
Urban Highway Section

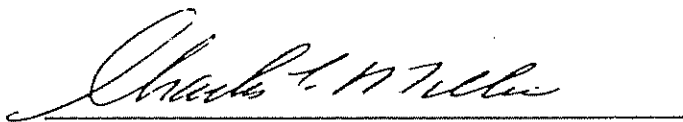
Accepted this 24th day of  
Feb, 1989

Outer Loop Highway  
Project No. RBM-600-1-506  
Tracs No. 101 L MA H2499 01C  
Agreement No. 42-1-506-051  
Design Section 12c

RESOLUTION

BE IT RESOLVED on this 9<sup>th</sup> day of Dec, 1988, that I, CHARLES L. MILLER, as Director of the Department of Transportation, have determined that in the interest of the State of Arizona that the Department of Transportation acting by and through the Highways Division, enter into an agreement with the CITY OF TEMPE for the relocation of water facilities and construction of a future water line. The relocation are necessary for construction of Outer Loop Highway Project No. RBM-600-1-506.

THEREFORE, authorization is hereby given to draft said agreement which, upon completion, shall be submitted for approval and execution by the State Engineer.



CHARLES L. MILLER, Director  
Arizona Department of Transportation

RESOLUTION NO. 89.06

A RESOLUTION OF THE COUNCIL OF THE CITY OF TEMPE, ARIZONA,  
AUTHORIZING EXECUTION OF AGREEMENT WITH ARIZONA DEPARTMENT  
OF TRANSPORTATION FOR THE PRICE ROAD OUTER LOOP CONSTRUC-  
TION UTILITY RELOCATIONS.

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WHEREAS, with the construction of the Outer Loop Highway by the State  
of Arizona Department of Transportation, it will be necessary to relocate cer-  
tain water lines belonging to the City of Tempe, and

WHEREAS, with the construction of the project, the City of Tempe has  
requested the installation of a future water line on Balboa Avenue be incorpo-  
rated within said construction project, and

WHEREAS, the State of Arizona is empowered by Section 28-108 Arizona  
Revised Statutes and the City of Tempe is empowered by Section 9-672B Arizona  
Revised Statutes to enter into an intergovernmental agreement setting forth  
the conditions for construction of said relocations and upgrades.

NOW THEREFORE, be it resolved by the City Council of the City of  
Tempe:

That the Mayor is authorized to execute said intergovernmental agree-  
ment with the State of Arizona Department of Transportation for the Outer Loop  
Highway Project No. RAM-600-1-506.

PASSED AND ADOPTED by the Mayor and City Council of the City of Tempe  
this 9th day of February, 1989.

Harry E. Mitchell  
Mayor

ATTEST:


Helen R. Fowler  
City Clerk

APPROVED AS TO FORM:

David R. M. [Signature]  
City Attorney

I, Helen R. Fowler, the duly appointed City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the attached to be a true and exact copy of Resolution 89.06, passed and adopted at the Regular Council Meeting of February 9, 1989, by the Tempe City Council, Tempe, Arizona.

DATED this 17th day of February, 1989.

A handwritten signature in cursive script, reading "Helen R. Fowler", written over a horizontal line.

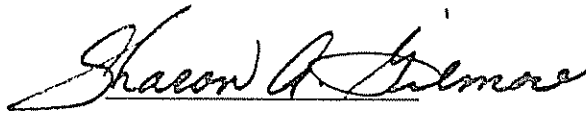
Helen R. Fowler, CMC  
City Clerk

ACKNOWLEDGMENT BY STATE

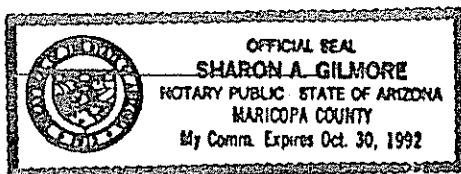
STATE OF ARIZONA       )  
                                  )  
                                  )SS.  
                                  )  
COUNTY OF MARICOPA   )

On this 20<sup>th</sup> day of March 1989, before me, the undersigned Notary Public, personally appeared Gary K. Robinson, Chief Deputy State Engineer, Arizona Department of Transportation, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public

My Commission Expires:



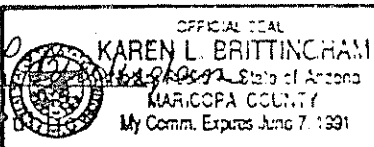


ACKNOWLEDGMENT BY CITY OF TEMPE

STATE OF ARIZONA       )  
                                  )  
                                  )SS.  
                                  )  
COUNTY OF MARICOPA   )

On this 24th day of February, 19 89, before me, Karen L. Brittingham, the undersigned Notary Public, personally appeared Harry E. Mitchell, of the City of Tempe, Arizona, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he/she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Karen L. Brittingham  
Notary Public  
OFFICIAL SEAL  
KAREN L. BRITTINGHAM  
Notary Public, State of Arizona  
MARICOPA COUNTY  
My Comm. Expires June 7, 1991

My Commission Expires:

June 7, 1991



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert K. Corbin

C89-35

INTERGOVERNMENTAL AGREEMENT


DETERMINATION

A. G. Contract No. KR89- 0032-TRD, is an agreement between public agencies has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 23rd day of January, 1989.

ROBERT K. CORBIN  
Attorney General

  
Assistant Attorney General  
Transportation Division